

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) CR No. 3:14-cr-00430
)
vs.) Columbia, SC
)
)
RAYCO BETHEA,)
)
Defendant.)
)
_____) DATE: March 31, 2021

BEFORE THE HONORABLE JOSEPH F. ANDERSON, JR
UNITED STATES DISTRICT JUDGE, PRESIDING
MOTION HEARING

A P P E A R A N C E S:

FOR THE PLAINTIFF:

WILLIAM KENNETH WITHERSPOON
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FOR THE DEFENDANT:

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COURT REPORTER:

KAREN V. ANDERSEN, RMR, CRR
United States Court Reporter
901 Richland Street
Columbia, SC 29201

1 THE COURT: Mr. Witherspoon, please call the case
2 this morning.

3 MR. WITHERSPOON: Your Honor, next case is United
4 States of America v. Rayco Bethea, Criminal Action No.
5 3:14-430. Mr. Bethea is present via video from Springfield,
6 Missouri. He's present. In the courtroom for him is Andrew
7 Ross Mackenzie, his attorney. Your Honor, we are here for a
8 resentencing in this case after the case was -- prior
9 sentence was vacated and sent back by the Fourth Circuit.

10 THE COURT: I'm not sure it's necessary, but out of
11 abundance of caution, let me put this admonition on the
12 record. Pursuant to Rule 5(f) of the Federal Rules of
13 Criminal Procedure, the United States is ordered to produce
14 all exculpatory evidence to the defendant pursuant to *Brady*
15 *v. Maryland* and its progeny. Not doing so in a timely manner
16 may result in sanctions, including the exclusion of evidence,
17 adverse jury instructions, dismissal of charges, and contempt
18 proceedings. In accordance with the recently passed statute,
19 I will enter a written order memorializing this oral warning
20 to the Government.

21 Mr. Mackenzie, good morning.

22 MR. MACKENZIE: Good morning, Judge.

23 THE COURT: Mr. Bethea, can you hear me effectively?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: I want to be sure before we begin, Mr.

1 Bethea, that you understand very clear that you have an
2 absolute right to be present here in the courtroom for this
3 resentencing proceeding. And, indeed, to that end, the
4 Government had already made preparations, made plans and
5 purchased a ticket to fly you here on a medical-type flight
6 at pretty significant expense to the Government so that you
7 could be present. And some time midweek last week, we
8 received an information from your attorney, Mr. Mackenzie,
9 that you preferred to stay there and participate in this
10 proceeding by satellite communication so that you could stay
11 there at the prison and get your dialysis treatments; is that
12 correct?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I want to be absolutely sure
15 you understand that I can call this off right now and we can
16 bring you here if you want to be here in person. But you
17 have a right to participate by satellite if you wish to do
18 so. Did you discuss this matter carefully with Mr.
19 Mackenzie?

20 THE DEFENDANT: Yes, Your Honor, I did.

21 THE COURT: All right. And did you consider your
22 right to come here in person?

23 THE DEFENDANT: I told him I wanted to do video
24 because of the girls when they came and got me, the places
25 they took me at didn't have any dialysis treatment. So when

1 they took me to Oakland, they had to turn me back around and
2 bring me back because they didn't have no dialysis. And then
3 again they said they had a place to go in Auburn, South
4 Carolina. They didn't have dialysis. So I just told Mr.
5 Mackenzie, hey, let's just do the video so I can make sure I
6 get my treatment, because I didn't want to go anywhere
7 without getting my treatment. So I asked if we could do a
8 waiver so we could do a live video.

9 THE COURT: I'm not sure I can go forward with this
10 record being put on the record that he can't get dialysis if
11 he's transported here. Is the marshal present?

12 THE COURT DEPUTY: No, sir. But they told me that
13 if he needed dialysis, they would take him to the emergency
14 room and the emergency room would provide the dialysis, is
15 what I was told by Chris Wolf of the U.S. Marshals office.

16 THE COURT: Well, I've already been reversed once
17 because of this very issue of whether the defendant could be
18 here or not. And I don't want to get reversed twice on the
19 same issue.

20 Mr. Mackenzie (sic), we can get you here and we can
21 get you dialysis -- I'm sorry. Mr. Bethea, we can get you
22 here and we can get you dialysis.

23 THE DEFENDANT: I just want to go on with the video,
24 Your Honor.

25 THE COURT: Mr. Bethea, there's a rule of criminal

1 procedure that says you must be present for all critical
2 stages of the proceedings against you. A resentencing is a
3 critical stage. I just do not feel comfortable going forward
4 with you telling me that you consent to participate by
5 satellite but only because you can't get dialysis on the way
6 here and after you get here. You can receive your dialysis
7 treatment. We can make that happen. And we will make it
8 happen.

9 THE DEFENDANT: Yeah, I know. But, Your Honor, I
10 prefer the satellite.

11 THE COURT: I hear you saying that, but I am not
12 going to get reversed twice in this case, Mr. Bethea. We can
13 get you -- we can bring you here and get you dialysis
14 treatment.

15 THE DEFENDANT: I understand, Your Honor. But I
16 would rather do it by satellite.

17 THE COURT DEPUTY: Do you want me to call the
18 marshals up here?

19 THE COURT: Yes.

20 THE COURT DEPUTY: Okay.

21 THE COURT: Mr. Bethea, you said you had been
22 transported somewhere before and you did not get dialysis
23 when you were transported? What was that for? What was that
24 transportation for?

25 THE DEFENDANT: Well, the first one was in Oakland.

1 They took me. I think it was like a holdover. And they said
2 they didn't have dialysis treatment. So they brought me
3 back.

4 THE COURT: Why were you being transported away from
5 your prison facility? That's my question.

6 THE DEFENDANT: I haven't the slightest idea, Your
7 Honor.

8 THE COURT DEPUTY: The marshal's on his way.

9 THE COURT: Mr. Mackenzie, I'm just concerned about
10 going forward on this record.

11 MR. MACKENZIE: I understand.

12 THE COURT: I do not want him to take an appeal
13 telling the Fourth Circuit that I, by not ensuring the
14 dialysis treatment, I caused him to forego his right to be
15 present. That's basically what he told me. The marshal told
16 me he would get dialysis treatment --

17 MR. MACKENZIE: Yes, sir.

18 THE COURT: -- while he was here.

19 MR. MACKENZIE: I don't know. I don't know the
20 circumstances. I don't know what was said to him, Your
21 Honor. I'm sorry.

22 THE COURT: Let's wait until the marshal gets here.

23 THE COURT DEPUTY: This is Chris Wolfe.

24 THE COURT: Mr. Wolfe, good morning.

25 MR. WOLFE: Yes, sir, Your Honor.

1 THE COURT: I asked you to come up to the courtroom.
2 We are about to begin a criminal resentencing with Mr. Bethea
3 who is incarcerated at a federal prison facility. And last
4 week he, through his attorney, he signed a waiver of
5 appearance indicating he wanted to participate by satellite.
6 And as we began proceeding this morning, I asked Mr. Bethea
7 if it was with his full consent that we go forward with
8 satellite rather than inconference hearing. And he said yes,
9 but. He said, yes, I'm satisfied, but the reason I'm
10 agreeing to do that is I can't get dialysis treatment while
11 I'm being transported. And I'm concerned that on that
12 record, I'm concerned about my ability to go forward.

13 So can you tell me, would he get dialysis treatment
14 if he were brought here?

15 MR. WOLFE: Yes, sir, he would get dialysis if he
16 were brought here. And I would just ask him who would tell
17 him that, because we would -- you know, in the means we would
18 transport him, we would have two deputies fly commercially,
19 pick him up, bring him here, and we had all the logistics
20 worked out.

21 THE COURT: How long would the flight take to get
22 him here?

23 MR. WOLFE: Round-trip, it was about eight hours.

24 THE COURT: I'm talking about one way.

25 MR. WOLFE: One way with the layovers and transfer,

1 probably about eight hours.

2 THE COURT: All right. And so I'm just assuming he
3 could get a dialysis treatment at the prison. And then you
4 could have him in Columbia, South Carolina, eight hours
5 later.

6 MR. WOLFE: Yes, your Honor.

7 THE COURT: And he gets dialysis three days a week,
8 so you should have plenty of time to get him a second
9 treatment after he gets here?

10 MR. WOLFE: Yes, sir, that's correct.

11 THE COURT: Mr. Mackenzie, I think we've got to
12 adjourn this hearing and get him here.

13 MR. MACKENZIE: I will follow your instruction,
14 Judge.

15 THE COURT: Mr. Witherspoon, does the Government
16 have a position?

17 MR. WITHERSPOON: We do not, Judge.

18 THE COURT: All right. We will reschedule this
19 hearing. How much lead time do we need to get plane flight
20 rescheduled and so forth?

21 MR. WOLFE: Your Honor, we will do it as quickly as
22 the Court would like to schedule it, couple weeks advance
23 notice.

24 THE COURT: We will probably schedule a month down
25 the road.

1 MR. WOLFE: That would be great.

2 THE COURT: Mr. Mackenzie, I know you drove down
3 here from Greenville this morning. We appreciate your
4 involvement in this case. I just think the safe thing to do
5 is get him here. If he says he wants to be here and he would
6 be here but for the dialysis treatment, it's not a problem.
7 We can get him dialysis while he's here.

8 Is it a commercial flight or a private flight or
9 what type flight?

10 MR. WOLFE: We will be flying him commercially, and
11 then both ways here and there.

12 THE COURT DEPUTY: What days does he have his
13 treatments?

14 THE COURT: Mr. Bethea, what days do you get your
15 dialysis treatment, what days of the week?

16 THE DEFENDANT: Monday, Wednesday and Friday, Your
17 Honor.

18 THE COURT: All right. So can we make arrangements
19 to pick him up on a Monday as soon as he finishes his Monday
20 treatment?

21 MR. WOLFE: We will work the transportation around
22 his dialysis.

23 THE DEFENDANT: I mean, I'm sorry.

24 MR. WOLFE: He was doing it Tuesday, Thursday,
25 Saturday.

1 THE DEFENDANT: Tuesday, Thursday, and Saturday.

2 I'm sorry. That was my --

3 MR. WOLFE: That's why we were bringing him here on
4 a Monday.

5 THE COURT: Let's just go back to that. We will
6 send out notice about a month down the road to reschedule the
7 hearing with Mr. Bethea present.

8 All right. Well, I'm sorry that we had to get
9 everybody here and, Mr. Mackenzie, you had to drive down from
10 Greenville, but we will reschedule it.

11 MR. WITHERSPOON: It looked like Mr. Bethea was
12 raising his hands.

13 THE COURT: Mr. Bethea, do you want to say something
14 else?

15 THE DEFENDANT: Yeah. I didn't mean to say it that
16 way. I was just letting you know what had happened. But I
17 did want the video, Your Honor. I didn't mean to put that on
18 the record. I was just telling you what happened.

19 THE COURT: Let's take a recess and let Mr.
20 Mackenzie talk with his client. And, Mr. Mackenzie, he seems
21 to be wanting to back peddle now from what he told me
22 earlier. I heard him tell me earlier he was consenting to
23 this video because he couldn't get dialysis treatment. And
24 on that record, I don't think I could go forward, because he
25 can get dialysis treatment. And the rule of criminal

1 procedure applicable here says he's supposed to be here. So
2 let's clear the courtroom and --

3 THE COURT DEPUTY: He's got means to talk to him.

4 THE COURT: We will take a recess and just tell me
5 when you are ready to resume. And I will let you discuss
6 both ways with him and decide what he wants to do.

7 (Whereupon, recess transpired.)

8 THE COURT: Let's go back on the record in the case
9 of United States of America v. Bethea.

10 Mr. Mackenzie, what is your client's position at
11 this time?

12 MR. MACKENZIE: Judge Anderson, during the recess, I
13 talked with Mr. Bethea again about his rights concerning
14 presence at resentencing. And he is now prepared to say --
15 what he tells me, what he meant to say is that he understands
16 that dialysis is available today if he were here. It will be
17 available in the future if this case needs to be rescheduled.
18 But that under any circumstances, he wishes to waive his
19 right to be personally present and wants to do this by video.

20 And let me just further reiterate, this was all his
21 idea. This notion of doing this sentencing by video was
22 broached by Mr. Bethea. He brought it up.

23 THE COURT: Right.

24 MR. MACKENZIE: That's when I contacted the Court.
25 And y'all put it in motion. I have discussed this with him

1 more than once, Your Honor. He signed the written waiver. I
2 think he understands that dialysis will, in fact -- I believe
3 he's prepared to state that he understands that dialysis is
4 available today. It will be available in the future. But
5 that, nevertheless, he wishes to waive his right to be
6 personally present.

7 THE COURT: All right. Mr. Bethea, can you hear me?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Mr. Bethea, I just want to
10 make a very clear record here. Mr. Mackenzie, your attorney,
11 told me that we made arrangements to have you transported
12 here. The plane ticket had been purchased. Arrangements had
13 been made to pick you up at your facility and bring you here
14 as expeditiously as possible. And some time mid-week last
15 week, you contacted Mr. Mackenzie and requested you be
16 allowed to participate by satellite communication; is that
17 correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. And I want to be very clear
20 now. If we were to bring you here, we would, in fact, have
21 dialysis treatment available for you as needed at a very
22 reputable medical facility. I want to be sure you understand
23 that factual statement. Are we clear?

24 THE DEFENDANT: Yes, Your Honor. Yes, Your Honor.

25 THE COURT: Knowing that, Mr. Mackenzie says you

1 still would like to go forward this morning with a satellite
2 conference as we have set up, waiving your right to be
3 personally present at the hearing; is that correct?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. And you discussed the pros
6 and cons of doing this with Mr. Mackenzie, have you?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Is it your decision, your personal
9 decision to stay right there at your facility where you are
10 this morning and participate by satellite at this
11 resentencing hearing?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. I would note for the record
14 that we seem to have very good quality audio and video, much
15 better than is normally the case with these type conferences.
16 Have you been able to see and hear me clearly, Mr. Bethea?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right.

19 Mr. Mackenzie, do you know of any reason why we
20 should not proceed this morning?

21 MR. MACKENZIE: No, Your Honor.

22 THE COURT: I find that Mr. Bethea has freely and
23 voluntarily waived his right to be personally present for
24 this resentencing hearing. His presence is normally required
25 by the Rules of Criminal Procedure. But we have a written

1 waiver that was filed with the clerk on the 25th of this
2 month signed by both the defendant and his attorney. That's
3 part of the record in this case. I've conducted an extensive
4 colloquy with Mr. Bethea. And he tells me now that after our
5 brief recess to let him confer with counsel, he now
6 understands fully that if he were to be transported here by a
7 commercial aircraft carrier, it would be about an eight-hour
8 flight and he would not miss any dialysis treatments en route
9 here or back to the facility. And for that reason, I'm
10 prepared to go forward with the resentencing this morning.

11 All right. As Mr. Witherspoon indicated, we are
12 here for a resentencing following a reversal and remand of
13 the Fourth Circuit of the earlier sentence imposed in this
14 case. The earlier was a life sentence that was issued before
15 the First Step Act because the court's recent activity in
16 vacating and resentencing the defendant caused the sentence
17 to occur after the First Step Act, the provisions of that
18 statute apply, which has a significant modification of the
19 potential sentence in Mr. Bethea's case.

20 After the mandate was received from the Fourth
21 Circuit, the United States Probation Office has prepared a
22 new presentence report. It was filed with the clerk on 21st
23 of March of this year. Copies have been furnished to both
24 the Government and the defendant. The addendum indicates
25 that neither side has objection to the factual findings or

1 guideline application in the revised presentence report.

2 Mr. Witherspoon, have you had enough time to read
3 over the presentence report?

4 MR. WITHERSPOON: We have, Judge.

5 THE COURT: Is it correct?

6 MR. WITHERSPOON: The Government has no objections.

7 THE COURT: Very good. Mr. Mackenzie, have you had
8 enough time to review the presentence report and discuss it
9 carefully with Mr. Bethea?

10 MR. MACKENZIE: Yes.

11 THE COURT: Probation indicates that you do not have
12 any objections to this new report; is that correct?

13 MR. MACKENZIE: Yes, sir.

14 THE COURT: Mr. Bethea, let me speak to you, sir.
15 Have you had enough time to read over this revised
16 presentence report prepared by the probation office and
17 discuss it thoroughly with your attorney?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: You just heard Mr. Mackenzie tell me
20 that you do not have any objection to the factual matters or
21 guidelines calculations contained in this revised presentence
22 report. Is that a correct statement?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Very good. I will adopt the new
25 presentence report filed with the clerk on the 21st of this

1 month.

2 THE COURT DEPUTY: On the 21st?

3 THE COURT: I'm sorry. March the 11th. Thank you,
4 Ms. Floyd. Filed on the 11th of this month. Just for the
5 record, it's dated March the 11th, 2021. I will adopt this
6 without objection as the Court's findings for the purpose of
7 sentencing in this case. That means that we are looking at
8 the following statutory and guideline provisions upon
9 resentencing. Under the statute, there's a mandatory minimum
10 of ten years and a potential maximum of life.

11 Under the statute, supervised release is at least
12 five years. Probation is not provided for. The fine could
13 be up to \$10 million. And the special assessment is \$100.
14 Under the advisory guideline provisions, the total offense
15 level is 32. The Criminal History Category is III. The
16 defendant is not eligible for straight probation under Zone D
17 of the guideline table. The advisory sentencing range is 151
18 to 180 months incarceration.

19 THE CLERK: 188.

20 THE COURT: I'm sorry. Thank you. 151 to 188
21 months of imprisonment, advisory only. The supervised
22 release period is five years. The fine was not calculated
23 due to inability to pay. There's no restitution to
24 calculate. And a special assessment is \$100.

25 Have I correctly stated the guideline and statutory

1 provisions, Mr. Witherspoon?

2 MR. WITHERSPOON: Yes, Your Honor.

3 THE COURT: Mr. Mackenzie?

4 MR. MACKENZIE: Yes, Your Honor.

5 THE COURT: Mr. Witherspoon, I will be glad to hear
6 from the Government on resentencing.

7 MR. WITHERSPOON: Judge, the Government filed a
8 motion for upward variance. And we also filed a sentencing
9 memorandum to go along with our upward variance motion. I
10 would state for the record that we stand by our sentencing
11 memorandum and the reasons for the upward variance.

12 THE COURT: Now, at first you requested more of an
13 upward variance than you did in your recently filed
14 memorandum yesterday; is that correct?

15 MR. WITHERSPOON: That's after going back and
16 reviewing it, I did reduce the amount. Initially in my
17 initial motion for upward variance, I sought a three-level
18 upward variance to Criminal History Category III, offense
19 level 35, which gave a range of 210 to 262 months.

20 Yesterday, Judge, I filed a sentencing memorandum
21 where I was only seeking a one-level increase, one Criminal
22 History Category level from a 3 to a 4. Same offense level,
23 which gives it a range of 168 to 210 months.

24 And, Judge, I can go through the reasons, however
25 the Court wants to proceed.

1 THE COURT: I read your memorandum. Anything you
2 want to add, I would be glad to hear you.

3 MR. WITHERSPOON: No, sir. Judge, I think that
4 pretty much lays it out. This is a very unusual case as the
5 Court has said. Aside from the remand because of First Step
6 Act and all, Mr. Bethea was given an opportunity initially to
7 lessen his sentence from a mandatory life down to a 20-year
8 sentence, and then even further. But he refused to take that
9 opportunity, Judge. Even though he was out on bond and was
10 supposed to be working with the Government to help lessen his
11 sentence, because he was out on bond because of his being on
12 the kidney transplant list, he continued to cook crack
13 cocaine for other drug dealers after his wife and children
14 left the home.

15 His drug weights, Judge, as in the presentence
16 report, roughly was 16 kilos of cocaine and little more than
17 a half kilo of crack cocaine. And that does not take into
18 consideration the amount of crack cocaine that he cooked from
19 February when he was arrested until August when he was
20 sentenced, which I calculated roughly more than two kilos of
21 crack cocaine that was cooked by Mr. Bethea. Even knowing he
22 was facing a mandatory life sentence, he continued to violate
23 the law.

24 When you look at the elements of 3553(a), I think --
25 I represent, Judge, that that -- his guidelines, the elements

1 of the 3553(a) reflect that it should be a higher sentence
2 based upon the nature and circumstances of the offense and
3 the characteristics of Mr. Bethea, the need for the sentence
4 imposed and the seriousness of the law. He knew he was
5 facing a life sentence, but he continued to violate the law
6 even though he knew he was facing this life sentence. And
7 the Government was taking every step possible to help him to
8 remain on the kidney transplant list, to get a kidney, and to
9 help himself so he wouldn't face this sentence.

10 Neither the guidelines nor his criminal history took
11 into account this action. For those reasons, Judge, we ask
12 that you increase his -- the Criminal History Category from
13 III to IV.

14 In addition, Judge, in the alternative, as I stated
15 in my memo, he did not get two criminal history category
16 points for one of the convictions he had, because he had
17 committed one offense in April. He committed another offense
18 in May. They were consolidated for sentencing on the same
19 day. And under the guidelines, they only count as one
20 sentence.

21 As I cited in my memo, there's case law that
22 indicates that does not accurately reflect his criminal
23 history category. So I would ask the Court to move from a
24 criminal history category of III to a criminal history
25 category of IV and still sentence him at level 32, which is

1 the new guideline range.

2 I note in Mr. Mackenzie's memo, sentencing
3 memorandum, he says that that is not allowed because the loss
4 of the three levels acceptance of responsibility takes into
5 account for that. But in the *Bolton* case that I cited in my
6 memo directly on point, indicates even if he lost acceptance
7 of responsibility, the Court still can enhance him for
8 committing an offense while he's out on bond for that
9 criminal activity. I think the *Bolton* case is directly on
10 point on that issue.

11 And I think the *Hines* case is directly on point on
12 the issue of the two convictions happening on different days,
13 sentencing on the same day, not receiving criminal history
14 category points, again, is directly on point.

15 THE COURT: You've got case authority for both of
16 your points that you argue?

17 MR. WITHERSPOON: Yes, sir.

18 THE COURT: Let me ask you this, Mr. Witherspoon.
19 As you know, this is a preliminary resentencing. And the
20 Fourth Circuit in recent years has been particularly
21 interested in the defendant's behavior while incarcerated.
22 And there's one case -- I don't know the name of it. I can't
23 remember it.

24 MR. WITHERSPOON: It was McDonald, I think it was.

25 THE COURT: One case where Justice Gregory said this

1 defendant thought he was in prison for life. He had no idea
2 that a retroactive application of the sentencing laws would
3 come into play. And notwithstanding that, he still was -- he
4 behaved himself. He did not, you know, antagonize the guards
5 every day of the week, so to speak. And so here we do have a
6 defendant who was -- thought he was in jail for life, and he
7 has a pretty good record. He only has two relatively minor
8 violations, one for inappropriate use of a -- inappropriate
9 e-mail, for which he lost e-mail privileges for 30 days, and
10 inappropriate use of another inmate's cell phone, for which
11 he was disciplined mildly. I didn't think any inmates had
12 cell phones. How could he use another inmate's cell phone.

13 MR. WITHERSPOON: It's not inmate's cell phone.
14 It's inmate number. The way I understand the prison system
15 is, I am given a specific number that I can use on the phones
16 to make calls. Therefore, whenever my number is used, it can
17 reflect it's being used by William Witherspoon.

18 THE COURT: Inappropriate use of another inmate's
19 number, not cell phone?

20 MR. WITHERSPOON: Yes, Your Honor.

21 THE COURT: Both of those are relatively minor.

22 MR. WITHERSPOON: The difference is in that case, as
23 I remember it, is that defendant had been incarcerated for a
24 long period of time before the change. Here, it looks like
25 Mr. Bethea has only been incarcerated for five years, maybe

1 five years.

2 THE COURT: Right.

3 MR. WITHERSPOON: And a lot of that has been while
4 we've been going through the appellate decision about the FSA
5 and the need for --

6 THE COURT: That's a good point. He had been in
7 prison for last five years, and there have been a lot of
8 activity, a lot of new law coming down on sentencing. So I
9 guess the argument I was making earlier is, has a little bit
10 less force because of that.

11 MR. WITHERSPOON: I think if you look, Judge, he
12 has -- when you go through again the elements of the 3553(a)
13 as far as helping vocational and educational training, he did
14 not have a GED. And as a result of going through the Bureau
15 of Prisons, he's working toward getting his GED, which is
16 another element that the Court takes into consideration in
17 3553(a) factors. There is hope that he will someday, some
18 point get a kidney transplant which will alleviate dialysis,
19 which will allow him to work. In his memo he even says now
20 he's working in the Bureau of Prisons. So he could get
21 vocational training that would help him when he's released
22 from prison, which would then allow him to help support his
23 family.

24 He's no longer looking at the life sentence. His
25 guidelines are substantially less today than they were in

1 2014, 2015. And so I think you take all that into
2 consideration. I think that's when you weigh those and when
3 you look at those, I still think, Judge, that the 168 to 210
4 months is sufficient but not greater than necessary.

5 THE COURT: All right. Mr. Mackenzie, I will be
6 glad to hear from you.

7 MR. MACKENZIE: Thank you, Judge Anderson. I just
8 want to reiterate about Mr. Bethea's medical condition. It's
9 well documented in the presentence report, but he does suffer
10 from lupus, kidney disease, end-stage renal failure, high
11 blood pressure, among other elements.

12 Lupus is immunocompromised condition, which makes
13 him more susceptible to other conditions. He's in need of a
14 kidney transplant. He does dialysis three days a week. He
15 has a fistula in his arm that makes that easier to do. He's
16 on multiple medications.

17 He does have a prior record, Your Honor. His prior
18 convictions no longer qualify for an 851 enhancement under
19 the First Step Act.

20 I also noted in my sentencing memorandum that he was
21 never considered a career offender under the sentencing
22 guidelines even at his initial sentencing. And the reason I
23 raise that is, it just seems a little inconsistent to me that
24 here we have a man who was serving a mandatory life
25 sentencing and wasn't even considered a career offender under

1 the guidelines. In spite of his prior record, he does not
2 have any convictions for a crime of violence or use of force
3 or anything like that.

4 He has done well in prison. His disciplinary record
5 is attached to my sentencing memo. It's one page. I don't
6 know that I've ever seen one that short. It lists only one
7 incident where he improperly used a telephone to call his
8 wife. And he was sanctioned for that. He tells me, although
9 we don't have a record of it, there was another recent
10 incident where he sent an improper e-mail. I believe it was
11 to another inmate. And he was sanctioned for that. And
12 those are his only disciplinary violations. He's
13 participated in multiple education courses. Your Honor,
14 those records are attached to his compassionate release
15 petition. That's in the record. He's taking multiple
16 education courses to better his education and improve
17 himself.

18 And, yes, I understand your point that even though
19 he was facing a life sentence, he took advantage of these
20 opportunities. I would say that's still relevant. He
21 certainly didn't do badly while he was in prison.

22 I understand the upward variances that are requested
23 by the Government. The first one having to do with the
24 continued criminal activity after he was on bond, after his
25 guilty plea before his initial sentencing. At the initial

1 sentencing, he lost his acceptance points at Your Honor's
2 direction because of his continued criminal activity. And
3 that result -- that results -- first of all, his initial
4 guideline range was 108 to 135 months. With the loss of
5 acceptance points, his range is 151 to 188 months. That's
6 his present guideline range. That is a difference of at
7 least 43 months, at least. In other words, that's a
8 difference of at least three and a half years.

9 If Your Honor sentences him under the guidelines, he
10 is already going to serve an additional three and a half
11 years because of that continued criminal activity. And I
12 would respectfully take the position that may be enough to
13 address that activity.

14 THE COURT: Well, I don't want to argue with you,
15 but we have a lot of defendants who lose the credit for
16 acceptance of responsibility because they tested positive for
17 drugs or shoplifting or something. But he had pretty bad
18 conduct, pretty bad conduct involved here.

19 MR. MACKENZIE: But I would respectfully say, he's
20 not escaping punishment. He's facing an additional three and
21 a half years at least under the guidelines. I understand the
22 *Bolton* case. I've read the *Bolton* case that's cited by the
23 Government. This is a serious case. I am not trying to
24 downplay it. But this *Bolton* case is a far more serious case
25 than what's going on here. In that case there was

1 allegations of unlawful possession of firearms, stolen
2 firearms, 924(c) convictions. That was a little bit
3 different than what's going on here.

4 I understand the Government's position, their motion
5 for variance based on his criminal history category. His
6 criminal history category is not understated. The
7 guidelines, you know, two of his prior sentences were
8 consolidated under the guidelines because that's the rule.
9 That's what the guidelines say you are supposed to do. That
10 is routine. That is uniform in every case where the issue
11 comes up, the guidelines say that's what you do. In every
12 case for every defendant in every presentence report, in
13 every federal district in this country that is the rule.
14 That is what you are supposed to do. So if we are not going
15 to do that in this case, that raises a question in my mind,
16 does that create a sentencing disparity issue there? Because
17 the guidelines say that is the norm. And if we are not going
18 to do that in this case, is he being treated fairly like all
19 the other defendants in the country?

20 Seems to me that if the presentence report had not
21 consolidated those cases, that would be grounds for a
22 variance. But the presentence report, the guidelines were
23 calculated correctly. I don't know that that's a grounds for
24 an upward variance. And I would point out that he did end up
25 serving six months for those prior convictions. He later

1 violated his probation and ended up serving six months. So,
2 again, I don't know that he's escaped punishment.

3 You know, Congress with the First Step Act said --
4 they clearly indicated they want to reduce the sentences for
5 people like Mr. Bethea and people who are in similar
6 positions to Mr. Bethea. They have clearly made that -- said
7 that. And the Fourth Circuit has confirmed that and said,
8 yes, not only that, but the First Step Act applies to this
9 case.

10 And Congress, it was Congress's intent to reduce
11 these old Draconian sentences from the 1980s and 1990s. It
12 seems to me that a lot of these resentencing issues that are
13 coming up all seem to be addressed by the guidelines. You
14 know, all the circumstances in this case seem to point us
15 back to the sentencing guidelines. And that's what we are
16 asking for. We are asking for the low end under the
17 guidelines, 151 months. That is a sentence that's reasonable
18 and sufficient. You know, that's 12 1/2 years. That is not
19 a short sentence. Again, Mr. Bethea is not in any way
20 escaping punishment.

21 And I'm also glad to address the compassionate
22 release issue when you are ready.

23 THE COURT: I think we should take that up second
24 after we impose the resentence.

25 MR. MACKENZIE: Yes, sir.

1 THE COURT: I think I earlier declined a request to
2 appoint counsel, but I'm going to appoint counsel today to --

3 MR. MACKENZIE: I'm glad to address that.

4 THE COURT: Representing him on that second phase of
5 that proceeding. All right.

6 MR. MACKENZIE: Yes, sir.

7 THE COURT: Anything further?

8 MR. MACKENZIE: No, sir, Your Honor.

9 THE COURT: Mr. Bethea, can you hear me, sir?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. You have a right to make any
12 statement that you wish at this time before the Court decides
13 upon a sentence in your case. So this is your chance to
14 speak. I will be glad to hear anything you want to say.

15 THE DEFENDANT: Yes, Your Honor. I have a letter I
16 want to read, if that's okay.

17 THE COURT: Yes, sir. Now, read slowly. The court
18 reporter has to take down what you say. And frequently when
19 people read something, they speed up and talk fast. And it's
20 hard on the court reporter. So please read slowly.

21 THE DEFENDANT: Your Honor, also, in case they miss,
22 I know my lawyer has a copy as well.

23 THE COURT: All right. Very good. We will give a
24 copy to the court reporter then. That's good. Go ahead.

25 THE DEFENDANT: All right. Honorable Judge Anderson

1 Jr, it is a privilege and an honor to have an opportunity to
2 share these words with you in the court. The years of
3 incarceration I have experienced have actually been some form
4 of blessing in my life. I don't mean to infer that I am
5 enjoying prison or the time spent away from my family and
6 those I love isn't hard. I just want to demonstrate that
7 this time has been beneficial in bringing about change in my
8 attitudes and my actions. I know this is a common refrain
9 among those seeking leniency from the Court, but please allow
10 me a few moments to express how I'm not using cliches for
11 speaking on the reality of change that has occurred in my
12 heart and life.

13 Judge Anderson, my past is littered with a series of
14 unfortunate incidents and poor decisions which led me to my
15 current set of circumstances. The missteps of my past I have
16 come to understand were not based on effects in my character
17 or errors in my thinking. Taking the drug classes I was
18 offered and living on the unit where the drug counselors and
19 facilitators have their office allowed me to assess and
20 analyze the information that has brought to my infamy and
21 change. Your Honor, I am not a bad person. I just made bad
22 decisions based on bad information. This doesn't absolve me
23 of guilt or responsibility for my past criminal behavior. I
24 accept both. But it does explain the difficulty I have
25 experienced in the past in trying to change. That difficulty

1 has been removed. The clarity I have gained through the hard
2 work of brutal self-analysis and introspection is a cherished
3 possession.

4 In addition, the institutional program coupled with
5 the substance abuse prevention classes I have completed and
6 created a reservoir of knowledge I can draw from to my God of
7 critical thinking and decision-making process. No longer do
8 I allow the misstep or misleading to cloud the truth and
9 corrupt my decision-making. I can see the obstacle in my
10 path. And more importantly, I can visualize the proper steps
11 to take to maneuver around those so-called obstacles and
12 continue on the proper path. This is not a jailhouse change
13 but a life-altering understanding that will assure not just
14 the end of my criminal thinking and behavior, but also allow
15 me to be a constructive member of my community, a responsible
16 member of my family, and a loving father to my children, and
17 a loving husband to my wife.

18 No one has the power to change the past, but all
19 humans possess the capacity to change within themselves. I
20 have often heard it said, when you know better, you do
21 better. Well, Your Honor, I can honestly say I now know
22 better. I owe it to my family to do better. I owe it to my
23 children to do better. I owe it to my wife who has been by
24 my side throughout this incarceration to do better. Most
25 importantly, I owe it to myself to do so and be better. I

1 owe it to myself to come out of the delusions of drug dealing
2 and criminal lifestyle and become the man I was meant to be,
3 a man of honor, dignity, respect and value.

4 I had begun the process while still within these
5 walls even though Springfield allows me to remain medically
6 unassigned to a job placement due to my medical condition,
7 need for dialysis. I've had chosen to maintain work detail
8 and manifest the process of change in my actions and not just
9 my record. It is my sincere intention to redeem myself by
10 living as an agent of responsibility, maturity and growth
11 where once I lived an an agent of pain, suffering and
12 destruction. I'm doing -- I am doing and will continue to do
13 everything in my new-found understanding and power to
14 continue to affect change in my life.

15 I am appealing to this Court for another opportunity
16 at freedom. I don't claim to have earned another chance. I
17 just claim to be worth one. I accept that criminal conduct
18 must be punished. But the greater system of justice ever
19 devised by man always sought to define the demands for
20 misdeeds to be punished with a devine attributes of mercy.

21 I believe both aspects of justice can be satisfied
22 in my situation with a grant of compassionate release.
23 Unprecedented times call for unprecedented actions. COVID-19
24 is a daily reality currently at Springfield, Missouri,
25 especially for dialysis patients. Congress has empowered you

1 to tip the justice with compassion in these types of
2 circumstances. I thank you, Judge Anderson, and the Court
3 for your time and your thoughtful consideration.

4 THE COURT: All right. Thank you, sir. Mr.
5 Mackenzie, anything further? You have a written copy? If
6 you could give it to the court reporter, I would appreciate
7 it.

8 MR. WITHERSPOON: Your Honor, for the record, I
9 think that was document entry level 101-3, was the letter.

10 THE COURT: It's already in the record.

11 MR. WITHERSPOON: That was sent with his
12 compassionate release.

13 THE COURT: Right. Anything in reply by the
14 Government?

15 MR. WITHERSPOON: Yes, sir, Judge. Mr. Mackenzie
16 and Mr. Bethea tend to highlight his medical conditions of
17 lupus, kidney disease, with the fistula and the medical --
18 multiple medications that he's received. I would point out
19 to the Court, he had those same conditions when he was
20 selling drugs. They did not preclude him from being involved
21 in the drug dealing, cooking crack cocaine. And what gets
22 me, I guess, is he was doing it in his family's house.
23 Because he was on home detention, he couldn't leave. He
24 would wait until his wife and children leave the house, bring
25 in drug dealers into his family's home, and cook crack

1 cocaine.

2 He was never a career offender, but he was serving a
3 life sentence. And he's not the only person that that has
4 happened to prior to the First Step Act where possession of
5 crack cocaine, PWID crack cocaine was pled down to
6 possession, which would preclude a person from being a career
7 offender, but would still be considered as a felony drug
8 offense, which could cause the Court to sentence a life
9 sentence.

10 Mr. Bethea's sentence, the request I ask, is a
11 40-month sentence, increase of 40 months. Mr. Mackenzie says
12 that was a -- three and a half years was what the *Bolton* case
13 says. So we are in the same boat with the criminal activity
14 while out on bond, no acceptance of responsibility. It's the
15 same amount that we are seeking.

16 The sentencing guidelines, Judge, as the Court has
17 said, is not the sentence. The Court -- this Court has to
18 determine that the guidelines are applicable, that they are
19 appropriate, that they are correct. And then the Court can
20 make the decision where the sentencing goes. The Court can
21 go up or the Court can go down. You just have to start at
22 the sentencing guidelines. And for Mr. Mackenzie to say that
23 the sentencing guidelines is where you are stuck at is not
24 true. We have defendants come in all the time asking this
25 Court for downward departures or downward variances for one

1 reason or another. Under Mr. Mackenzie's position, you
2 wouldn't be able to do that. But the Fourth Circuit and the
3 Supreme Court and Congress have given the Court the
4 discretion, starting at the guidelines, to make that
5 determination where it should be sentenced.

6 And we are not saying that he's escaping punishment.
7 We are not saying that. We are just saying that, Judge, the
8 punishment in this case should be higher than what the
9 guidelines are in this case.

10 Mr. Bethea talks about a substance abuse. But when
11 you look in the presentence report, paragraph 93, Mr. Bethea
12 talks about substance abuse. When you look in the
13 presentence report, page 28, paragraph 93, he wasn't an
14 abuser of drugs. He was just selling drugs for cash.

15 He also in that same paragraph went to LRADAC, which
16 as the Court knows is a drug treatment organization here. So
17 he's had drug treatment. Even after that, he continued to
18 sell drugs in this case for a number of years.

19 We again, Judge, think his guidelines under the
20 factors of 3553(a) that we've cited in our sentencing
21 memorandum and/or an alternative because his guidelines under
22 represent his criminal activity, that the one-level increase
23 to 168 to 210 months is a reasonable sentence in this area.

24 And I will point out to the Court, his guidelines
25 now of 151 to 188, the 168 to 210 primarily encompasses that

1 same guideline level.

2 THE COURT: Some overlap there.

3 MR. WITHERSPOON: Tremendous overlap there. So,
4 again, we would ask the Court for upward variance.

5 THE COURT: All right. Mr. Witherspoon, you've done
6 your usual good job of forcibly advocating the Government's
7 position here. The defendant probably deserves an upward
8 variance, but I'm going to respectfully disagree in this case
9 and sentence within the guidelines. But I am going to
10 sentence at the very high end of the guideline level.

11 Having calculated and considered the advisory
12 sentencing guidelines and having also considered the relevant
13 statutory sentencing factors of Section 3553(a) of Title 18,
14 it is the judgment of the Court that the defendant,
15 Rayco Bethea, is hereby committed to the custody of the
16 Bureau of Prisons to be imprisoned for a term of 188 months,
17 which is the top of the applicable guideline range.

18 I find the defendant does not have the ability to
19 pay a fine, therefore, the fine is waived. I previously
20 imposed a mandatory special assessment of \$100. Probation
21 informs me that had been paid in full. Upon his release from
22 incarceration, the defendant shall be placed on supervised
23 release for a term of five years. Within 72 hours of his
24 release from custody of the Bureau of Prisons, the defendant
25 shall report in person to the probation office in the

1 district to which he is released.

2 While on supervised release, the defendant shall
3 comply with the mandatory and standard conditions of
4 supervision that are all set out in Title 18 of the United
5 States Code, Section 3583(d), and the sentencing guidelines
6 special conditions of supervised release.

7 I'm required to put my reasons on the record.
8 Special conditions of supervised release 1 through 9 and 13
9 serve the statutory sentencing purposes of public protection
10 and rehabilitation pursuant to Section 3553(a)(2)(C) and (D).

11 Standard conditions of supervisions 10 and 12 serve
12 the statutory sentencing purpose of public protection
13 pursuant to Section 3553(a)(2)(C) of Title 18.

14 Standard condition of supervision 11 ensures that
15 the defendant does not engage in activities that may
16 potentially conflict with the other conditions of supervision
17 and that may pose risk to the defendant's probation officer.

18 Now, there's a recent decision in the Fourth Circuit
19 that says I can't incorporate by reference the standard
20 conditions. And usually we have from the probation office
21 the reference to the specific guidelines that sets out those
22 standard conditions. And I don't see it here. Can you help
23 me with that?

24 PROBATION OFFICER: Your Honor, I believe what you
25 are referencing to is the conditions that you just read over

1 to go through conditions 1 through 13.

2 THE COURT: 1 through 13.

3 PROBATION OFFICER: And those are also incorporated
4 in reference within the presentence report towards the latter
5 part --

6 THE COURT: Those special conditions are already
7 included in the presentence report and incorporated by
8 reference. Mr. Mackenzie, you read over those special
9 conditions?

10 MR. MACKENZIE: Yes, Your Honor.

11 THE COURT: Has your client read those special
12 conditions?

13 MR. MACKENZIE: Yes, sir, I reviewed it with him.

14 THE COURT: Very good. I put on the record my
15 reasons for imposing those special conditions.

16 In addition, the defendant shall comply with the
17 following special condition -- I'm sorry. I've been saying
18 special. Standard. I misspoke. I should have said 13
19 standard conditions. In addition, there's one special
20 condition, the defendant must submit to substance abuse
21 testing to determine if he's used a prohibited substance. He
22 must contribute to the cost of this program in an amount
23 determined reasonable by the probation officer's sliding
24 scale for services. If applicable, he shall cooperate in
25 securing payment from any third-party, such as insurance or

1 Medicaid. This special condition is based upon the
2 defendant's admitted substance abuse and history as detailed
3 in the presentence report.

4 Now, Mr. Bethea, you've signed a plea agreement
5 containing a partial waiver of your appeal rights in this
6 case. Only in very narrow circumstance may a defendant who
7 has waived his appeal in this fashion nevertheless attempt to
8 pursue an appeal. You should discuss with Mr. Mackenzie in
9 detail whether you have any grounds for an appeal and whether
10 an appeal would be in your best interest or not.

11 If you wish to appeal and cannot afford an attorney,
12 the court would appoint one for you. If you wish to appeal,
13 you would have to file your notice of appeal within 14 days
14 from the day the judgment order containing your sentence is
15 filed with the clerk.

16 I'm required to put on the record my reasons for
17 imposing this particular sentence. First of all, as required
18 by Section 3553(a), I have considered the nature and
19 circumstances of the offense. In this case, we have a
20 defendant who has pled guilty to conspiracy to possess with
21 intent to distribute 5 kilograms or more of a mixture of
22 substance containing cocaine and 280 grams or more of a
23 mixture or substance containing cocaine base.

24 This conviction arose from an investigation of the
25 so-called "Antonio Williams drug distribution ring," also

1 known by the nickname Dollar Bill. The investigation began
2 in April 2011 with the interception of wire and electronic
3 communications on cellular telephones used by Mr. Williams.
4 That wiretap information revealed that Williams was a
5 multi-kilogram cocaine dealer in the Batesburg-Leesville area
6 of South Carolina who was supplying a large number of
7 conspirators with cocaine, including the defendant in this
8 case, Mr. Bethea.

9 Subsequent to Mr. Williams's arrest, he was
10 interviewed and provided historical information regarding Mr.
11 Bethea's illegal drug activity. Another defendant, William
12 Holloway, also provided information regarding Mr. Bethea's
13 drug activity.

14 As indicated by Mr. Witherspoon, he was ultimately
15 held responsible for 16 kilograms of cocaine and one-half of
16 a kilogram of crack cocaine. Both of those are serious
17 offenses in this Court's opinion.

18 Historically in the District of South Carolina, we
19 are in the top five districts in the country in terms of
20 crack cocaine prosecutions. So suffice it to say that crack
21 cocaine distribution is a serious and pervasive crime in
22 South Carolina. A lot of people become addicted to this
23 substance because of people like Mr. Bethea who are providing
24 it to them.

25 Regarding the history and characteristics of the

1 defendant, Mr. Bethea has a criminal history, which we might
2 consider to be moderate. It's in the mid-point, so to speak.
3 It includes prior convictions for forgery, burglary,
4 third-degree grand larceny, possession of crack cocaine,
5 possession with intent to distribute crack cocaine, first
6 offense, possession of crack cocaine, first offense, and then
7 some traffic violations involving failure to stop for blue
8 lights and a driver's license restriction. He also has many
9 convictions for minor traffic offenses that don't bear
10 mention here.

11 I do note, as the Government, I believe, points out,
12 in spite of these convictions in the past for serious
13 convictions, Mr. Bethea spent very little time of
14 incarceration. He was given suspended sentences with
15 probation. And in one of the situations, violated probation,
16 and then only received a sentence of six months, which was
17 combined with another conviction at the same time.

18 I'm aware of his medical problems. His history of
19 lupus and kidney problems is well-documented in the record.
20 He also has high blood pressure, acid reflux, a 14 percent
21 kidney function. He's had Stage IV -- I'm sorry, Stage V
22 renal failure. And he has a permanent fistula implanted to
23 assist with the dialysis treatment. He also has related
24 conditions that kind of spinoff from his kidney problems of
25 sleep disturbance, fatigue, heartburn, inability to exercise,

1 sun sensitivity, jaundice, and some type of problem with his
2 left arm, and dietary restrictions. He also has heartburn.
3 I'm aware of all those medical conditions.

4 Probation indicates in their presentence report that
5 according to the Bureau of Prisons, however, his lupus is now
6 in remission on medication. His hypertension is in
7 remission, not requiring medication. He was diagnosed with
8 sleep apnea that was resolved with a foam to elevate the head
9 of his bed. And probation indicates that the records at the
10 institution indicate he has no other medical issues at this
11 time.

12 He does not require assistance completing his daily
13 living skills. But he does have a serious kidney problem and
14 he is on the list to get a kidney transplant because of that
15 problem.

16 I would, of course, also note, as Mr. Witherspoon
17 has appointed out, he had these medical problems when he
18 committed the crimes at issue here. According to his record,
19 he went on social security disability in the year 2011 and
20 has not had gainful employment since that date. The
21 indictment here alleges that the crime, the conspiracy, went
22 from 2002 to 2014. But if you dig deeper into the
23 presentence report, Mr. Bethea's involvement began in 2011
24 and went on to 2013. So he committed this drug trafficking
25 crime while on disability and while he still had this kidney

1 problem that still plagues him today. And so I'm aware of
2 his medical problems.

3 Regarding his behavior in prison while incarcerated,
4 as we've already said, he only has two minor bumps on his
5 record, one using another inmate's number to make a cell
6 phone call, and another for sending an unauthorized e-mail
7 message, which are extremely lightweight, in my opinion.

8 He's taken some educational programs, including
9 National Parenting Program I and II. He's still working on
10 his GED. He hasn't taken any real vocational training,
11 primarily, I'm sure, because of his kidney problems. But Mr.
12 Mackenzie indicates that he has taken a number of educational
13 programs in an effort to get his GED, all of which is
14 commendable.

15 I've also considered as required the need for the
16 sentence imposed to reflect the seriousness of the offense.
17 As I said, this is a serious offense, particularly as Mr.
18 Witherspoon has mentioned numerous times, while the defendant
19 was given the luxury of being out on bond for these pending
20 charges for which he faced a potential life sentence, he used
21 that opportunity to continue to cook crack cocaine in his
22 home when his wife and children were not present, in clear
23 violation of the terms of his release. He was not held
24 accountable for that weight of crack cocaine produced, but it
25 did cause him to lose the discount for acceptance of

1 responsibility which was three levels. And that translated
2 into a good many additional months of incarceration as
3 indicated by counsel.

4 I've also considered the need for the sentence
5 imposed to promote respect for the law. Once again, his
6 behavior while on pretrial release pending trial of cooking
7 crack cocaine certainly does not demonstrate respect for the
8 law. I am also required to consider the need for imposing
9 just punishment and adequate deterrence and the need to
10 protect the public from future crimes of the defendant. I've
11 carefully considered all those factors.

12 I've also considered the need to avoid unwarranted
13 disparity in the sentences of similarly situated
14 co-defendants. Mr. Bethea's record speaks for his, his
15 conduct. Particularly his behavior while on release pending
16 trial sets him apart from similarly situated co-defendants in
17 terms of his disregard for the law while these charges were
18 pending.

19 Those are all my reasons. Anything further?

20 MR. WITHERSPOON: Nothing from the Government, Your
21 Honor.

22 MR. MACKENZIE: No, sir.

23 THE COURT: Do you want to take a break and then go
24 into the compassionate release, or do you want to move right
25 into it?

1 MR. WITHERSPOON: I'm ready.

2 MR. MACKENZIE: I'm ready.

3 THE COURT: Let's go right into it then. I guess we
4 need to call on Mr. Mackenzie first then. This is your
5 motion.

6 MR. MACKENZIE: Thank you, Your Honor. Yes, Mr.
7 Bethea filed a pro se motion for compassionate release. I'm
8 glad to address that at this time.

9 THE COURT: Let's just -- Mr. Bethea, do you consent
10 to proceeding with this compassionate release motion on the
11 satellite just as you did with the earlier sentencing
12 hearing?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: I'm not sure he really has a right to be
15 present for it. He doesn't even have a right to a hearing on
16 it, but let's confirm. You are satisfied with going forward
17 with the satellite, Mr. Mackenzie? I'm sorry, Mr. Bethea?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Go ahead. Let me hear from you.

20 MR. MACKENZIE: Yes, sir, Your Honor. He's filed a
21 motion for compassionate release alleging extraordinary and
22 compelling reasons for his release. Under the statute, he
23 alleges he has a serious physical or medical condition such
24 that he's not able to perform self-care for himself. And he
25 suffers from a condition from which he will not recover.

1 Again, the medical condition is pretty
2 well-established in the record. I am not to go through that
3 again. Your Honor seems to have a good grasp of that. I
4 would just add that had Mr. Bethea believes that he would
5 receive better medical care if he were released. He would
6 receive better medical care and have a better chance of a
7 kidney transplant if he's released on the outside.

8 There's also COVID-19 concerns. Of course, we all
9 have that concern. But according to the CDC, kidney disease
10 puts him at a higher risk --

11 THE COURT: I think you indicated he received his
12 first vaccination when the memo was written. Has he received
13 a second one now?

14 MR. MACKENZIE: He has, Your Honor. And Mr.
15 Witherspoon mentioned that in his filings. And, yes, in the
16 meantime, he has received his second vaccination. But,
17 nevertheless, the virus affects people in different ways.
18 And there are variants that are coming along, it seems
19 lately. And, again, he's at higher risk because of his known
20 diseases.

21 He has a release plan. His application for
22 compassionate relief is attached. It's actually attached to
23 the Government's response to Mr. Bethea's petition. Therein
24 it lays out his release plan. He would -- he tells me now he
25 would be living with his mother-in-law here in the Columbia

1 area. He does have a place to go and reside. He would
2 receive medical care at the same place where he had been
3 receiving medical care here in the Columbia area before his
4 incarceration. He will have financial support. As has
5 already been mentioned, he qualifies and was actually
6 receiving social security at one point. That will have to be
7 reactivated, but he does qualify for that.

8 He tells me that he also has a possible employment
9 opportunity lined up. And I will let him address that, Your
10 Honor.

11 On the compassionate release, we also had the *McCoy*
12 decision from the Fourth Circuit, *United States v. McCoy*.
13 This is the case -- in the Fourth Circuit opinion in this
14 case, in the Bethea case, the Fourth Circuit referred us to
15 their McCoy decision from last year, and said that Mr. Bethea
16 may be eligible for compassionate release under that
17 decision. And in that decision, the Fourth Circuit said that
18 district court can consider any extraordinary or compelling
19 reason for release, and that the Court is not constrained by
20 the policy statement contained within the sentencing
21 guidelines.

22 And the Court went on to say that if there is a
23 gross disparity between the prior sentence and what a
24 defendant would be sentenced to under present circumstances,
25 that can be a reason for compassionate release. Congress is

1 saying that these Draconian sentences for drug cases are no
2 longer necessary, but that isn't reason for compassionate
3 relief. And we do have that in this case where Mr. Bethea
4 was initially facing a mandatory life sentence and the
5 guideline range is now 12 1/2 to 15 years, Your Honor.

6 THE COURT: But let me jump in here. As Mr.
7 Witherspoon points out, you already are getting the benefit
8 of the new law --

9 MR. MACKENZIE: Yes, Your Honor.

10 THE COURT: -- in this case.

11 MR. MACKENZIE: Yes, sir, Your Honor. I was also
12 going to tell you that it is Mr. Bethea's position on the
13 compassionate release motion that he be actually released
14 from confinement.

15 THE COURT: I understand that. But you are saying
16 that *McCoy* says I can look at intervening changes in
17 sentencing law. Well, we did when we took the remand from
18 the Fourth Circuit and did away with 851 enhancements. We
19 did sentence him under the new more lenient provisions.
20 Right?

21 MR. MACKENZIE: Yes, sir. Now that you made that
22 ruling, that issue is pretty well resolved.

23 THE COURT: All right.

24 MR. MACKENZIE: Nevertheless, Mr. Bethea is
25 requesting release under the statute. Of course, the Court

1 is required to make an individual assessment in every case.
2 And we do have some serious medical conditions in this case
3 and --

4 THE COURT: Let's talk about the medical conditions.
5 I don't want to sound punitives here, but as I point out
6 earlier, he qualified for complete social security disability
7 back in 2011. And then he committed these crimes after that.
8 And he committed these crimes with his kidney problem, with
9 his dialysis treatments. And so if I would accept that
10 argument, and I don't want to make it sound superficial, but
11 it would almost be like if you have a severe medical problem,
12 you have a get-out-of-jail-free card in your pocket. Because
13 you commit a crime, a serious crime, get a sentence and then
14 turn right around and want to come back out because you've
15 got this medical problem that you had well before you started
16 committing the criminal conduct. I'm just bothered by that.

17 MR. MACKENZIE: I acknowledge that, Your Honor. I
18 would just add to that that with the passage of time and
19 increase in age, you know, the lupus is not going to go away.
20 These are chronic conditions. The kidney disease is not
21 going to go away. And with his increasing age, you know,
22 this is going to be more and more of a problem for him over
23 time and --

24 THE COURT: Well, again, just to follow up on that,
25 I'm supposed to avoid the unwarranted disparity in sentencing

1 of similarly situated co-defendants, his co-defendants who
2 did not have severe medical conditions had sentencing they
3 cannot get out from under for medical reasons. That's
4 another matter I need to consider.

5 MR. MACKENZIE: I would also point out that with the
6 COVID-19 concerns, he is more susceptible if he is to
7 contract further disease or be in serious trouble with the
8 COVID-19 itself. So he's asking that he be released at this
9 time under the compassionate release statute, Your Honor,
10 released to supervised release and home detention.

11 I believe Mr. Bethea would also like to address the
12 Court on this issue at the appropriate time, Your Honor.

13 THE COURT: I will hear from him. Mr. Bethea you
14 have a right to make any statement you wish on this motion
15 for compassionate release. I will be glad to hear anything
16 you want to tell me.

17 THE DEFENDANT: Yes, Your Honor. I just want to
18 read this. Your Honor, I'm here today to ask for mercy on
19 two things. One, if you can go as low as 120 months; two,
20 Your Honor, if you can grant me compassionate release, the
21 rest of my time on home confinement with probation. If you
22 grant me compassionate release, I have a job offer at UPS.

23 And with that being said, if I'm released, Your
24 Honor, once I start my dialysis treatment on the street, if
25 I'm released, they will put me on the kidney transplant list

1 as soon as possible. I also have family members that might
2 have a kidney match.

3 Your Honor, the guy you sentenced in 2015 is not the
4 same guy that's sitting here today. Your Honor, all I ask is
5 for a second chance to be with my wife and children. All I
6 want to do is to work and help my wife to take care of our
7 children.

8 Since my incarceration, I have put my wife and
9 children through a lot by not being present. My children are
10 growing up real fast. And all I can ask is to be with my
11 children's lives (sic), especially my boys. I just want to
12 make sure they don't go down the same path as I did.

13 Your Honor, this has been a learning experience and
14 a wake-up call. All I ask is for a second chance to be with
15 my wife and children. I know my wife and children need me as
16 much as I need them.

17 And, again, I'm just asking for your mercy so I
18 could be with my family again. That's it.

19 THE COURT: All right. Thank you, sir. Anything
20 further, Mr. Mackenzie?

21 MR. MACKENZIE: No, Your Honor.

22 THE COURT: Mr. Witherspoon?

23 MR. WITHERSPOON: Judge, it sounds like, as I stated
24 in my memo, his two reasons are COVID-19 and FSA. I think as
25 the Court eluded to, the First Step Act, he was sentenced

1 today as if he was brought in for the first time today. So I
2 think that one is aside. And that has been resolved, as the
3 Court has said.

4 Other reason is COVID-19. He contends that because
5 of his medical conditions he's more susceptible to COVID-19.
6 As I pointed out in one of my responses, he was exposed to a
7 person who had COVID-19. He was isolated, quarantined, and
8 showed no signs. Thereafter, now he has been inoculated with
9 both vaccines for COVID-19. That does not say that he won't
10 get it. But according to all the data, as a result of his
11 inoculations, he's more than 90 percent -- I wouldn't say
12 cured. The vaccines are 90 percent good to prevent any
13 serious harmful effects from COVID-19. Even though he was
14 exposed, he did not have the inoculation, now he has the
15 inoculation, and the inoculation are helpful in that regard.

16 I would point out a couple of things that seem a
17 little odd here. He said that he was going to apply for
18 social security disability. Both he and Mr. Mackenzie says
19 that he has an employment opportunity. He clearly said that
20 he has a job opportunity with UPS. That's not light work.
21 If he's disabled, how in the world is he going to be able to
22 work at UPS?

23 THE COURT: Well, you can get a job and give up your
24 disability benefits.

25 MR. WITHERSPOON: He says he's disabled.

1 THE COURT: Right. Right.

2 MR. WITHERSPOON: And he's going to apply for social
3 security. So you can't be disabled today and then tomorrow
4 get a job saying I'm no longer disabled. There's got to be
5 something there.

6 He wants home confinement, Judge. We gave him home
7 confinement or detention between his guilty plea and his
8 sentencing. But he, nevertheless, continued involvement in
9 his drug dealing.

10 And he's put his family through a lot, and he
11 certainly has. But his family never was in his consideration
12 during the time he was out on bond.

13 When you look at his grounds for compassionate
14 release, he doesn't like being in prison. He doesn't like
15 being away from his family. But those were not sufficient to
16 prevent him from continuing in his drug dealing during the
17 time of his bond.

18 Judge, I would contend that given all the weight,
19 all the considerations that you've heard today, that he has
20 not shown grounds sufficient for compassionate release such
21 that he would be released to home detention from prison. So
22 we ask that you deny his motion.

23 THE COURT: Anything in reply?

24 MR. MACKENZIE: I don't have anything else, Your
25 Honor. Thank you.

1 THE COURT: Give me one second. All right. On the
2 record before me, I'm constrained to deny the motion for
3 compassionate release. First of all, as Mr. Witherspoon
4 pointed out, pursuant to the *McCoy* case, the defendant has
5 already been given the benefit of the new sentencing laws
6 that have gone on the books since his original sentence. And
7 he was sentenced under the First Step Act and the 851
8 enhancements went away. And that substantially reduced his
9 sentencing exposure from a life sentence down to just over 16
10 years, I think 16 1/2 years, approximately, at the high end
11 of the guidelines.

12 I'm aware of the terrible problems in the prisons
13 occasioned by the COVID-19 pandemic, but Mr. Witherspoon in
14 his memorandum has documented all of the corrective measures
15 that the bureau has taken to provide for safety and security
16 there during the pandemic. When the defendant was exposed to
17 someone who tested positive, he was given -- he was taken
18 away, and thankfully did not suffer from that. He's now
19 received both vaccines which are supposed to be at least 90
20 percent effective for preventing the disease.

21 I'm certainly aware that his lupus problems and
22 kidney problems make him much more susceptible to bad results
23 while in prison. I'm fully aware of that. But I cannot get
24 away from the fact that his behavior while on pretrial
25 release pending trial in this case, he used the opportunity

1 to go back to cooking crack cocaine in his home when his wife
2 and children were not present.

3 So what I'm saying is, I think I cannot conclude
4 that he would not be a danger to the community if released.
5 I think there's a severe possibility that he could revert to
6 his old ways of criminal misbehavior, serious criminal
7 misbehavior in terms of drug distribution. And he would,
8 therefore, be a threat to the community if released.

9 So I acknowledge he has lupus and needs a kidney.
10 He gets dialysis treatment three times a week at the Bureau
11 of Prisons. Hopefully, the COVID-19 pandemic will begin to
12 subside. He's gotten both vaccinations. I'm just not
13 convinced that he's demonstrated extraordinary and compelling
14 circumstances. And I think the Government has demonstrated
15 he would be a threat to the community if released.

16 So for all those reasons, the request for
17 compassionate release is respectfully denied.

18 Anything further?

19 MR. WITHERSPOON: Nothing from the Government, Your
20 Honor.

21 MR. MACKENZIE: No, sir, Your Honor.

22 THE COURT: All right. Thank you very much.

23 Appreciate the technology help, Kurt. We didn't have any
24 satellite drops. And we had good audio and visual. We will
25 be in recess.

(Whereupon, proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter